

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Bridging the Digital Divide for Low Income Consumers</b>	)	<b>WC Docket No. 17-287</b>
	)	
<b>Lifeline and Link Up Reform and Modernization</b>	)	<b>WC Docket No. 11-42</b>
	)	
<b>Telecommunications Carriers Eligible for Universal Service Support</b>	)	<b>WC Docket No. 09-197</b>
	)	

**COMMENTS OF  
BETTY ANN KANE, CHAIRMAN OF THE PUBLIC SERVICE  
COMMISSION OF THE DISTRICT OF COLUMBIA**

I, Betty Ann Kane, Chairman of the Public Service Commission (DC PSC), respectfully submit these comments regarding issues raised in the Notice of Proposed Rulemaking (NPRM) included in the *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking and Notice of Inquiry*,<sup>1</sup> adopted by the Federal Communications Commission (FCC) on November 16, 2017. These comments represent my personal opinion on the issues addressed herein and do not represent the opinion of the DC PSC or any other representative or entity of the DC Government.

---

<sup>1</sup> See, *In the Matter(s) of Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Fourth Report and Order, Order on Reconsideration, Memorandum, Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*; FCC 17-155; Released: December 1, 2017; available online at: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-155A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-155A1.pdf).

## **A. RESPECTING THE STATES' ROLE IN PROGRAM ADMINISTRATION**

### **1. Reauthorizing State Commissions to Designate Lifeline ETCs**

Initially, in lieu of presenting a redundant legal analysis regarding the FCC's erroneous decision in the *2016 Lifeline Order* to preempt State commissions' authority to designate Lifeline Broadband Provider (LBP) eligible telecommunications carrier (ETC) designations,<sup>2</sup> I would like to concur with the analysis presented in the Comments by the National Association of Regulatory Utility Commissioners (NARUC).<sup>3</sup>

Secondly, I endorse the FCC's proposed decision to eliminate stand-alone LBP designations, thereby requiring broadband service providers (BSPs) that participate in the federal Lifeline program to also provide voice telecommunications service, in addition, to broadband Internet access service (BIAS). It must be a fundamental attribute of Lifeline service that the customer of this service be able to use it to make voice calls to the State/local Public Safety Answering Point (PSAP) to receive emergency 911 assistance. Limiting Lifeline service customers to a LBP's BIAS that may only provide an email or text messaging communications service places Lifeline service customers at risk of not being able to communicate with the State/local E911 PSAP. As has been well documented, we are in a transition with the provision of Next Generation 911 PSAP services, whereby the great majority of State/local PSAPs are unable to provide assistance

---

<sup>2</sup> See, Lifeline and Link Up Reform and Modernization et al., Third Report and Order, Further Report and Order, and Order on Reconsideration (2016 Lifeline Order), 31 FCC Rcd 3962, 4038, para. 249; Released: April 27, 2016.

<sup>3</sup> NARUC Comments filed concurrently.

to members of the public that attempt to communicate using a BIAS email or text messaging service. (As an example, while the District of Columbia’s Office of Unified Communications’ PSAP began providing E911 text messaging service in December 2016, it is unable to communicate through a LBP’s BIAS email service.)

## **2. Partnering with States for the Successful Implementation of the National Verifier**

The FCC seeks “comment on ways states can be encouraged to work cooperatively with the Commission and USAC to integrate their state databases into the National Verifier without unnecessary delay.”<sup>4</sup> The preliminary step to encourage such cooperation is for the FCC to adopt the proposed decision to eliminate stand-alone LBP ETC designations and to require BSPs participating in the federal Lifeline program to also provide voice service. Arguably, some States may be able to assert authority over BIAS providers that do not provide a regulated voice service, thereby, enabling BIAS providers to participate in a State Lifeline program. However, in the District of Columbia a BIAS provider that does not offer a regulated voice service is not subject to the DC PSC’s authority and, thus, the DC PSC could not authorize a BIAS provider that does not also provide regulated voice local exchange service to participate in the DC PSC’s Lifeline program.<sup>5</sup> Therefore, since BIAS providers would not be participants in both the federal and DC PSC Lifeline programs it is unlikely that the DC PSC would be able to legally facilitate

---

<sup>4</sup> See, NPRM, at para. 57.

<sup>5</sup> See, D.C. Official Code §34-2006(c)(1).

USAC's access to any DC government databases to implement the National Verifier for the federal Lifeline program.<sup>6</sup>

Secondly, I concur with NARUC's recommendation that the FCC should help states "defray any cost associated with making customer eligibility information available to the centralized database" of the National Verifier.<sup>7</sup> The DC PSC contracts with a third-party Lifeline program administrator to provide the eligibility verification service and database management for participants in the DC PSC's Lifeline program. The costs for the DC PSC's Lifeline program administration contract are recovered as a cost component of the surcharge on customer bills for regulated telecommunications services. Thus, in the District, as well as in other States that use third-party Lifeline program administrators, there will probably need to be a contract payment adjustment to cover the additional costs for the contractor to integrate the District's Lifeline program database into the National Verifier. I expect that the FCC or the Universal Service Administrative Company (USAC) would be amenable to repaying to the DC PSC any increases in contract payments to our third-party administrator to perform this function.

---

<sup>6</sup> There are 34 States that may be in similar positions since they have passed legislation or adopted rules that limit the State commission's oversight of IP-enabled services (presumably, including BIAS). See, "Telecommunications Oversight 2017: A State Perspective"; presented by Sherry Lichtenberg, Ph.D.; Principal Researcher- Telecommunications, National Regulatory Research Institute, at NARUC Annual Meeting; November 14, 2017; See page 3, available online at: <http://nrri.org/wp-content/uploads/2017/11/2017-Nov-Sherry-Lichtenberg.pdf>

<sup>7</sup> See, "Resolution on Lifeline Program Reform": adopted by the NARUC Board of Directors; February 17, 2016.

## B. IMPROVING LIFELINE’S EFFECTIVENESS FOR CONSUMERS

### 1. Focusing Lifeline Support to Encourage Investment in Broadband Capable Networks

#### *Lifeline Support for Facilities-Based Service.*

The FCC concludes in the NPRM that Lifeline financial support “will best promote access to advanced communications services [pursuant to the principles set forth in section 254(b) of the Telecommunications Act of 1996 ("the Act")] if it is focused to encourage investment in broadband-capable networks.”<sup>8</sup> Further, the FCC proposes "limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice- and broadband-capable last-mile network.”<sup>9</sup> I support this proposal, with one caveat that I will explain later, for three reasons.

First, the FCC’s tentative decision to adhere to the principles set forth in section 254(b) of the Act and to limit Lifeline financial support to facilities-based voice and BIAS providers belatedly remedies the FCC's *TracFone Modification Order and Virgin Mobile ETC Forbearance Order*.<sup>10</sup> This tentative decision indirectly affirms an underlying argument in the pending Motion for Reconsideration filed by the Pennsylvania Public Utility Commission which stated that “the guiding principles cited in the March Orders i.e., increased customer choice, high-quality service

---

<sup>8</sup> See NPRM, at para. 62.

<sup>9</sup> See *id.*

<sup>10</sup> *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, 24 FCC Rcd 3375 (2009) (*TracFone Modification Order*); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*; CC Docket No. 96-45; Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*).

offerings, and mobility are not statutory criteria” that can serve as the basis for a decision to grant Forbearance, as set forth in Sections 214 and 254 of the Act.<sup>11</sup>

Second, the FCC's tentative decision recognizes that the FCC now has an opportunity to correct the flaws in the current federal Lifeline service program by revisiting the FCC’s prior *TracFone Modification and Virgin Mobile Forbearance Orders* in the context of reorienting Lifeline service from only financially supporting voice services to providing a financial discount for both voice services and broadband services for low income households. I expect that some Commenters will assert that existing wireline and wireless Lifeline services are adequate to enable low income households to equally be able to search for employment, to complete schoolwork assignments, to access healthcare and emergency services, and to access other government services. This is a misleading argument that only serves to ensure that low income households will be limited to voice services and inferior broadband services accessible from wireless Lifeline service phones. Simply put, while wireless Lifeline services offer consumers the benefit of mobility, it should be recognized that wireless Lifeline service phones do not have the capabilities to enable low income households to effectively perform on-line tasks such as researching for and completing schoolwork or resumes and job applications or renewing driver licenses. As was noted by FCC Commissioner Rosenworcel in her Dissenting Statement to the “2018 Broadband Deployment Report”<sup>12</sup> “There are 19 million Americans in rural areas who lack the ability to access high-speed services at home. There are 12 million school-aged children who are falling into the Homework Gap because they do not have the broadband at home they

---

<sup>11</sup> Pennsylvania Public Utility Commission, Motion for Reconsideration of the *TracFone Modification Order and Virgin Mobile ETC Forbearance Order*, CC Docket No. 96-45; filed: April 3, 2009.

<sup>12</sup>See, “2018 Broadband Deployment Report”; GN Docket No. 17-199; Released: February 2, 2018.

need for nightly schoolwork”<sup>13</sup>, thereby affirming that there continues to be a need for high-speed broadband Internet access service to the home, a need that has not been met, nor is expected to be met, by non-facilities-based wireless Lifeline service providers.

Third, the FCC should no longer ignore that a significant portion of the annual Universal Service Fund ("USF") financial support payments go to companies which do not invest that money in broadband-capable networks. For example, in 2016, 17 non-facility based wireless Lifeline service providers received 72 percent of the \$1,238,067,066 in USF Lifeline financial support paid to the 20 largest recipients of non-tribal Lifeline financial support (see Attachment A). There is no independent empirical data that shows that non-facilities-based wireless Lifeline service providers have directly contributed to the investment in broadband infrastructure upgrades or geographic expansion by the underlying facilities-based wireless service providers. Furthermore, as has been documented by USAC<sup>14</sup>, there is not enough money in the USF's High Cost Fund to meet the demand of rural broadband service providers for financial support to expand the geographic availability of broadband infrastructure or to maintain and upgrade existing broadband infrastructure. Providing in excess of \$1 billion annually from the USF to companies that do not directly invest in the provision, maintenance, and upgrading of facilities and services for which the support is intended, as is required by section 254(b) of the Act, is an imprudent decision that inevitably further delays deployment of needed broadband infrastructure

---

<sup>13</sup> See, *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199; Dissenting Statement of Commissioner Jessica Rosenworcel; February 2, 2018.

<sup>14</sup> The FCC's *Rate-of-Return Reform Order* required USAC to use a budget mechanism that reduces the HCSL and CAF BLS financial support for rural rate-of-return carriers below USAC-approved forecasts which for the July 2017 through June 2018 budget year were adjusted by USAC to a 12.4% reduction of the previously approved budget forecast of \$1,404,224,995 to an adjusted annual budget of \$1,230,796,413.

in unserved areas or places pressure on the FCC to raise the current budget cap for the High Cost Fund programs, thereby, leading to an increase in the USF customer surcharge rate above the existing astronomical rate of 19.5 percent.

In addition, the FCC seeks comment on whether the adoption of the tentative decision to limit Lifeline financial support to facilities-based voice and BIAS providers would "impact the number of Lifeline providers participating in the program and the availability of quality and affordable Lifeline broadband services?"<sup>15</sup> To date, there has been no evidence filed in the FCC's Lifeline program dockets that specifically quantifies and demonstrates that a decision by the FCC to limit USF Lifeline financial support to facilities-based voice and BIAS providers will significantly reduce the geographic areas served by wireline and wireless Lifeline service ETCs. Certainly, there are many wireless service resellers and others that speculate that such a decision will automatically result in a catastrophic decrease in the availability of Lifeline service simply because there will likely be fewer wireless service providers that market Lifeline service in geographic areas which currently have multiple non-facilities based wireless Lifeline service providers. This conclusion overlooks the 2016 decision by Sprint and i-wireless, LLC to merge the nationwide wireless Lifeline service programs of Assurance Wireless and Access Wireless (then the second and fifth largest providers of wireless Lifeline services nationally) that resulted in the expansion of Sprint's facility-based wireless Lifeline services to approximately the same markets as America Movil's TracFone (d/b/a SafeLink).<sup>16</sup> Without the addition of granular

---

<sup>15</sup> See, NPRM, at para. 65.

<sup>16</sup> According to unpublished 2016 Lifeline program support data provided to DC PSC by USAC, TracFone and Sprint did not receive Lifeline program financial support for study areas in: Alaska, Montana, North Dakota, Oklahoma, Vermont, Wyoming, or the Virgin Islands; while Sprint did not receive Lifeline program financial support in Hawaii and Puerto Rico; and TracFone did not receive Lifeline program financial support in Colorado and Nebraska.



geographic and subscribership evidence to the record, this opinion does not automatically lead to a conclusion that the FCC's adoption of the tentative decision will result, in a significant decrease in the availability or affordability of voice and BIAS Lifeline services.

I note that there are concerns by some State commissions,<sup>17</sup> consumer advocates and others that eliminating USF Lifeline service financial support for non-facilities-based Lifeline service providers may result in an undetermined number of geographic areas not having any wireline or wireless ETCs to provide voice and broadband Lifeline services. While I have not seen quantitative evidence to demonstrate the probability of such an outcome, I suggest that the FCC evaluate: (1) the feasibility, benefits, and costs of requesting State commissions to annually verify which census blocks do not have a wireline or wireless facilities-based Lifeline service ETC; and (2) whether using reverse "Dutch" auctions<sup>18</sup> to allocate USF Lifeline service financial support for such areas, whereby, facilities-based and non-facilities-based wireless ETCs would be eligible to bid to provide Lifeline service in unserved census blocks at or less than the \$9.25 USF Lifeline support level/customer, would be effective for providing Lifeline service to unserved areas.

*Discontinuing Lifeline Support for Non-Facilities Based Service.*

---

<sup>17</sup> See Comments of the: Indiana Utility Regulatory Commission; Michigan Public Service Commission; Missouri Public Service Commission; and Minnesota Department of Commerce and Minnesota Public Utilities Commission; filed: January 24, 2018).

<sup>18</sup> The FCC has previously determined that industry auctions are the most effective means for the distribution of spectrum licenses and the use of reverse "Dutch" auctions are the most economically efficient means for distributing financial support from the USF High Cost Fund's Connect America Fund to enable the deployment of broadband infrastructure to unserved areas.

The FCC seeks comment on: "How should the facilities-based requirement apply in a situation where a reseller and a facilities-based provider form a joint venture to provide Lifeline service?"<sup>19</sup> I suggest that allowing non-facilities-based companies, both existing wireless Lifeline service ETCs and other companies, to partner or form joint ventures with facilities-based wireline and wireless Lifeline service ETCs could be beneficial to the promotion of future Lifeline voice and broadband services. As has been amply demonstrated by several of the non-facilities-based wireless Lifeline service providers, they are successful at marketing and selling Lifeline services to low income households. Such capabilities would be useful to some facilities-based wireline and wireless Lifeline service providers and should not be precluded by the FCC.

*Continuing the Phase Down of Lifeline Support for Voice Service.*

The current FCC rules provide that USF financial support for Lifeline voice services will decrease to zero dollars on December 1, 2021, with an exception permitting USF financial support for Lifeline voice service to continue in Census blocks where there is only one Lifeline service provider. I suggest that continuing to use the December 1, 2021 target date is suitable for application to the requirement for voice and BIAS Lifeline service ETCs to be facilities-based. A nearly three-years transition should be sufficient for existing non-facilities-based wireless Lifeline service ETCs to decide whether to invest in their own broadband-capable facilities or to partner with facilities-based wireless service providers to offer voice and broadband Lifeline service or to pursue alternate business service options. Furthermore, a three-years transition enables existing Lifeline service customers of non-facilities-based wireless Lifeline service ETCs

---

<sup>19</sup> See, NPRM, at para. 65.

sufficient time to enroll with qualified voice and BIAS wireline Lifeline service providers<sup>20</sup> or facilities-based voice and BIAS wireless Lifeline service providers.<sup>21</sup>

## Conclusion

We do not know what the profit-loss statements look like for the non-facilities-based wireless Lifeline service ETCs. It is purely speculative as to whether they have the financial resources to invest in their own voice and broadband facilities or to partner with facilities-based wireline or wireless voice and broadband service providers to offer Lifeline services. We do know that they do not have the financial incentive to make such investments now. The current federal Lifeline service program has created an environment where marketing and sales ventures are the priority for these companies. That was not the intent of the FCC and the States when the original Lifeline program was created more than 30 years ago and it should not be the intent when the program transitions to voice and broadband services for low income households.

The current federal Lifeline service program ignores a basic principle of the Telecommunications Act of 1996, “to promote access to advanced communications services”.<sup>22</sup> The FCC has a “Win-Win” opportunity to simultaneously provide: financial support for new discounted broadband services for low income households; create financial incentives for the investment in broadband

---

<sup>20</sup> For example: Century Link: <http://www.centurylink.com/aboutus/community/community-development/lifeline.html>; Frontier: <https://frontier.com/resources/discountprograms/lifeline-program>; Verizon: <https://www.verizon.com/support/residential/account/manage-account/lifeline-discount>; Windstream: <https://www.windstream.com/about/windstream-information/lifeline-assistance-program>

<sup>21</sup> See Attachment A: Sprint / i-wireless; and Smith Bagley. In addition, there are smaller facilities-based wireless Lifeline ETCs that operate in fewer states or a single state; for example: U.S. Cellular (a subsidiary of Telephone and Data Systems; \$482,930 in 2016 USF Lifeline support) in 13 States; GCI Communication in Alaska (\$11,512,350 in 2016 USF Lifeline tribal and non-tribal support); and Puerto Rico Telephone / Claro in Puerto Rico (\$7,206,834 in 2016 USF Lifeline support).

<sup>22</sup> 47 U.S.C. § 254(b).

infrastructure; and reduce the incidence of waste, fraud, and abuse in the Lifeline service program. It should not be one or the other. There is a real opportunity to meet all these objectives in the new broadband Lifeline service program.

I appreciate the opportunity to submit comments in this proceeding.

Respectfully Submitted,

/s/ Betty Ann Kane

Betty Ann Kane  
Chairman  
Public Service Commission of the District of Columbia

February 21, 2018

Attachment (1)